IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1112 OF 2007

Ravindranath Mishra ..Applicant
V/s
The State of Maharashtra ..Respondent.

Ms.Pooja Bhojane, Advocate for the applicant.
Mrs.M.H.Mhatre., APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 23RD APRIL, 2007.

P.C.

. Heard Ms. Bhojane, learned Counsel for the applicant and Mrs. Mhatre, learned APP for the State.

2. The applicant is accused in Sessions Case No. 130/2005 before the Additional Sessions Judge Thane. On 22nd March, 2007, the matter was fixed for hearing . On that day, three prosecution witnesses being P.W.10,P.W.112 and P.W.12 were present. However, when the matter was called in the first half of the day, Mr. Shejpal, Counsel for the accused was not present and on his behalf another Advocate Mr. Nitin Bhunne, had made a statement that Mr.Sejpal would be available at 2.30 P.M. However, at 2.30 P.M. Mr. Sejpal was not present

to cross-examine the witnesses. At that time, the application was made by Mr. Bhunne, Advocate stating that Mr.Sejpal has gone to attend the funeral of his relative at Kandivali and was therefore, unable to appear before the Court and to cross-examine the witnesses. With this reason, he prayed for adjournment of the case for cross-examination of those three witnesses. Application came to be rejected. Being aggrieved by the said rejection, the accused has preferred the present application seeking direction to the trial Court to recall those three witnesses for cross-examination.

3. After some discussion at Bar, Mrs. Mhatre, learned APP has no objection to allow this application. I find that the Advocate on behalf of the applicant had given a very valid reason to remain absent on the day because his relative had expired and he had gone to Kandivali to attend the funeral. Due to this reason, he could not come back upto 2.30 P.M. Therefore, another Advocate on behalf of Mr.Sejpal Advocate was justified in seeking adjournment. I am told that out of three witnesses, P.W.12 is the investigating officer. By refusing the opportunity of cross-examination by

rejecting the said applicant, the learned trial Court had practically deprived the applicant/accused of his valuable right of cross-examination of the witnesses. The impugned order appears to be very harsh and impractical. In fact, by such order the learned Additional Sessions Judge simply gave a reason to the accused to come to this Court, whereby the trial is further prolonged. Had he granted the adjournment and fixed the matter within a day or two, no harm could be caused to any of the parties. Therefore, I find that the impugned order cannot be sustained.

4. The application is allowed. The impugned order is hereby quashed. The learned Additional Sessions Judge, Thane is hereby directed to recall P.W.10,P.W.11 and P.W.12 for cross-examination by the accused/applicant.

(J.H. BHATIA, J.)